

## **REMARKS**

The Office Action mailed 19 November 2010, has been received and its contents carefully noted. Claims 1, 3-5, 21, 24, 25, and 36 were pending, claims 1, 3-5, 21, 24, 25, and 36 were rejected. By this amendment, claims 1, 3-5, and 36 are amended. Support may be found in the specification and the claims as originally filed. Claim 1, 3-5, and 36 have been amended to define the amino acid as isolated. No statutory new matter has been added. Therefore, reconsideration and entry of the claims as amended are respectfully requested.

### **Rejection under 35 U.S.C. 101**

The Examiner rejected claims 1, 21, and 36 under 35 U.S.C. 101 as relating to non-statutory subject matter. The Examiner indicated that the recitation of "An isolated amino acid sequence. . ." would obviate the rejection.

Applicants respectfully submit that the rejection under 35 U.S.C. 101 may be properly withdrawn in view of the amendments to the claims.

### **Rejection under 35 U.S.C. 102(b)**

The Examiner rejected claims 1 and 4 under 35 U.S.C. 102(b) as being anticipated by MacFarlane. This rejection is traversed.

Applicants respectfully submit that MacFarlane is not an enabling reference. Specifically, as set forth in the declarations by inventors Scot and MacFarlane (submitted herewith), the clone WP5212 and its sequences were not publicly available prior to the effective filing date of the instant invention. Thus, the mere mention of WP5212 alone or in combination with the information in MacFarlane does not provide an enabling disclosure of the instant invention as set forth in the claims.

As MacFarlane is not an enabling disclosure, the rejection under 35 U.S.C. 102(b) should properly be withdrawn.

### **Rejection under 35 U.S.C. 102(e)**

The Examiner rejected claims 1, 3-5, and 36 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 7,214,786. Specifically, the Examiner deemed that SEQ ID NO:211,164 of

the '786 patent discloses SEQ ID NO:1 as instantly claimed and SEQ ID NO:118,877 discloses SEQ ID NO:4. This rejection is traversed.

Applicants respectfully submit that the '786 patent includes SEQ ID NO:211,164, however, this SEQ ID NO:211,164 does not correspond or disclose or encompass SEQ ID NO:1 of the present application. As such, Applicants respectfully submit that SEQ ID NO:1 of the present application is not disclosed in the '786 patent which relates to nucleic acid molecules and other molecules associated with plants and uses thereof for plant improvement. A diabetogenic epitope comprising SEQ ID NO:1 is not disclosed at any point throughout the specification or sequence listing. SEQ ID NO:211,164 is shown below for the Examiner's review.

```
SEQ ID NO 211164
LENGTH: 72
TYPE: PRT
ORGANISM: Triticum aestivum
FEATURE:
OTHER INFORMATION: Clone ID: PAT_TA_105582.pep
SEQUENCE: 211164
  Gly Ser Pro Ser Thr Arg Thr Gly Thr Pro Leu Pro Pro Pro His Ala
  1                               5                               10          15
  Ala Ser Pro Ala Ile Arg Arg His Cys Arg Ala Pro Pro Leu Cys His
                20          25          30
  Pro Pro Ile Leu Phe Pro Leu Pro Ile Arg Thr Asn Leu Leu Arg Arg
      35          40          45
  His Leu Lys Pro Pro Gln Pro Pro Ile Ser Cys Cys Gln Ala Leu Pro
      50          55          60
  Ile Ser Pro Glu His Gly Leu Asn
      65          70
```

In addition, Applicants respectfully submit that SEQ ID NO:4, as set forth in claim 36, is not disclosed in combination with SEQ ID NO:1 as required by new claim 36 which depends from claim 1 and indicates that the isolated amino acid sequence of claim 1 comprises SEQ ID NO:4. The Examiner will recall that claim 1 is directed to an isolated amino acid sequence comprising a diabetogenic epitope defined by SEQ ID NO:1. As the diabetogenic epitope defined by SEQ ID NO:1 is not disclosed in the '786 patent, the subject matter of claim 36 which includes claim 1 therefore cannot possibly be disclosed in the '786 patent.

Therefore, Applicants respectfully submit that the rejection under 35 U.S.C. 102(e) should properly be withdrawn.

#### **Rejections under 35 U.S.C. 103(a)**

The Examiner rejected claim 3 under 35 U.S.C. 103(a) as being unpatentable over MacFarlane in view of US 6,803,221. The Examiner also rejected claims 4 and 5 as being unpatentable over MacFarlane in view of US 6,927,041. The Examiner rejected claims 21, 24,

and 25 as being unpatentable over US 7,214,786 in view of US 4,281,061. These rejections are traversed.

Applicants respectfully submit that the cited documents, alone or in combination, do not teach or suggest the present invention as claimed. Specifically, U.S. Patent Nos. 4,281,061, 6,803,221 and 6,927,041 do not alleviate the deficiencies of MacFarlane and/or US 7,214,786. Applicants submit that U.S. Patent Nos. 4,281,061, 6,803,221 and 6,927,041 do not teach or suggest the amino acid sequence comprising a diabetogenic epitope defined by SEQ ID NO:1. Therefore, the combination these U.S. patents with MacFarlane and/or US 7,214,786 do not teach, disclose or suggest the features of claim 1 or claim 4.

Therefore, the rejections under 35 U.S.C. 103(a) should properly be withdrawn.

#### **Request for Interview**

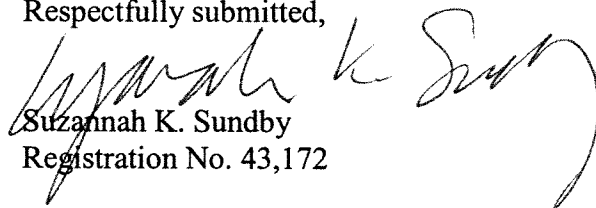
Either a telephonic or an in-person interview is respectfully requested should there be any remaining issues.

### CONCLUSION

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Therefore, it is respectfully requested that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Official action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, in the event that additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. 1.136(a), and any fees required therefore are hereby authorized to be charged to **Deposit Account No. 024300**, Attorney Docket No. **034205.003**.

Respectfully submitted,



Suzannah K. Sundby  
Registration No. 43,172

Date: 19 April 2011  
SMITH, GAMBRELL & RUSSELL, LLP  
1130 Connecticut Ave., NW, #1130  
Washington, D.C. 20036  
Telephone: (202) 263-4332  
Fax: (202) 263-4352  
ssundby@sgrlaw.com